Where the grantee is still free to rescind, a reconveyance in which his grantee, the mortgagor, reassumes the mortgage debt has been held to amount to a valid release of the prior agreement to assume the mortgage. *Morstain* v. *Kircher*, 190 Minn. 78, 250 N.W. 727 (1933). In the principal case the court stated that the conveyance from Brickell and Kirchhofer to Herrold alone did not amount to a rescission since Herrold and his wife were the original grantors. Such a position can hardly be justified if the wife joined in the conveyance merely for the purpose of releasing her right of dower. Simply naming her as grantee in the deed would give her an interest greater than that which she had previously conveyed. If the court meant that the right of dower released by the wife to the grantee must now be reconveyed to her, this could only be done on the assumption that a third party may have the wife's dower outstanding even though the fee is in her husband. The release of the right of dower operates to extinguish and not to transfer an interest. The releasee does not get an interest, but only the immunity from the releasor asserting it. See *Black* v. *Kuhlman*, 30 Ohio St. 196 (1876). The right of dower cannot be separated from the principal estate. *In re Lingafelter*, 104 C.C.A. 38, 181 Fed. 24 (1910), which affirmed 8 Ohio L. Rep. 230 (1909). If it is correct to assume that the wife merely released her right of dower it would seem from an analysis of the effect of the release that the act of reconveyance to the wife as required by the court would be of no legal significance.

HOBERT H. BUSH

NEGLIGENCE

DUTY OF DRIVER OF SCHOOL BUS IN REGARD TO CHILDREN WHO HAVE JUST LEFT THE CAR

Plaintiff's seven-year-old son and several other children alighted from the school bus, which the defendant was driving, when it made its usual stop across the road from his home. Whether the child went to the front or rear of the bus in order to cross the road, was disputed by the evidence; but when the bus started up again, the little boy was run over. The driver had no actual knowledge of the child's proximity to the bus; but, seeing other children going across the road and no one in front of the bus, he believed they were all out of the way. The jury found the defendant not negligent, and a judgment for the plaintiff was sustained in the Court of Appeals. In the syllabus, however, it was laid down as a matter of law that, "A driver of a school bus, in the exercise

of due care is under no duty, before proceeding, to descend from his bus and ascertain the whereabouts of the alighting children when he has no knowledge of a child's proximity to the bus." *Dickerhoof, Admr., Appellant* v. *Bair, Appellee,* 54 Ohio App. 320, Ohio Bar, Vol. IX, No. 51 (1936).

A carrier of passengers "is bound to exercise as high a degree of care, skill, and diligence in receiving the passenger, conveying him to his destination, and setting him down safely as the means of conveyance employed and the circumstances of the case will permit." 10 C.J. No. 1294. Expressions commonly used to describe the duty of the common carrier are, "highest degree of care," "extraordinary care and caution," "extraordinary care and diligence," etc.

Although a school bus is not a common carrier, no lesser degree of care is required of the driver. In *Phillips* v. *Hardgrove et al,* 161 Wash. 121, 296 Pac. 559 (1931), the question before the court was whether the school district and the bus driver were required to exercise ordinary care or the highest degree of care consistent with the practical operation of the bus, which is required of carriers of passengers generally. The court there said that, "if the rule of the highest degree of care arises, as all the authorities say, from the nature of the employment and on the grounds of public policy, there is no reason why it should not be applied to a school district the same as any other passenger carrier. Certainly, school children are entitled to the same degree of care as are adults. * * * * The operator of the bus is also required to exercise the highest degree of care."

What acts meet the requirement of the "highest degree of care" depends upon the circumstances. In *The Cleveland Railroad Co.* v. *Sebesta et al,* 121 Ohio St. 26, 166 N.E. 898, 29 Ohio L.R. 278, 7 Ohio Abs. 350 (1929), plaintiff, an adult, who was struck by an automobile just as he stepped from a street car, was not allowed to recover from the street car company because the motorman was under no duty to do for the plaintiff the things he could do for himself. The court indicated that the motorman might, however, have been under a greater duty if it were not for the fact that plaintiff was "apparently in full possession of his faculties, physical as well as mental. He was neither an aged or infirm person, nor was he a child, and no one noting his actions as described by himself would be led to think that he needed or desired any information or caution with respect to the manner in which and the time at which he should leave the car." "While the duty of the carrier to all passengers is the same in degree, the amount of care may vary with the age, sex, or bodily infirmity of the passenger, greater

care being required, for example, in respect to children of tender years than is necessary for adults." 10 C.J. No. 1330.

Holding the driver of a school bus to the same degree of care as the driver of an ordinary bus or a street car motorman does not, therefore, mean that the precautionary measures required of each will be identical. In effect, since all the passengers of the school bus are children, the school bus driver is constantly under a greater duty than is the operator of the ordinary common carrier. Not only because of the youth of his passengers, but because they have no choice as to their mode of transportation, the driver of a school bus occupies a different relation to his passengers than does the driver of an ordinary common carrier. *Tipton* v. *Willey*, 47 Ohio App. 236, 191 N.E. 804, 40 Ohio L.R. 233 (1934). His duty to the child does not cease when the child reaches a place of safety on the ground, but he must "use every reasonable precaution and care for the safety of such children and to prevent any harm or danger coming to them, either in approaching the bus, or while riding in the bus, or when alighting from and leaving the immediate proximity of the bus at the completion of their journey, or at any time during the journey." *Burnett* v. *Allen*, 114 Fla. 489, 154 So. 515 (1934). Thus the care required of the school bus driver is in reality not only greater than that required of the common carrier, because his passengers are children, but, for the same reason, his duty lasts longer.

The common situation dealing with the duty of a school bus driver to a child who has just left the bus is one involving an injury to the child by a passing automobile. The questions in those cases is whether the driver was negligent in not warning the child of the approaching car or in allowing him to leave the bus at that particular time. Under such circumstances, it has been uniformly held that the driver's negligence is a question for the jury. *Tipton* v. *Willey, supra; Sheffield* v. *Lovering et al*, 51 Ga. App. 353, 180 S.E. 523 (1935); *Machenheimer* v. *Falknor et al*, 144 Wash. 27, 255 Pac. 1031 (1927); *Burnett* v. *Allen, supra; Phillips* v. *Hardgrove et al, supra.* "Whether a person contracting and performing such a contract has used all such reasonable care and caution is a question for the determination of the jury in each case." *Burnett* v. *Allen, supra. Phillips* v. *Hardgrove et al, supra*, was a suit against the bus driver, the school district, and the driver of the automobile which struck the child. Judgment in the lower court was in favor of the first two defendants, but the Supreme Court of Washington held that both the school district and the operator of the bus were required to exercise the highest degree of care, and a new trial was granted because the court could not as a matter of law say that under the circumstances those defendants were not guilty of negligence.

In fact situations similar to that of the Dickerhoof case, but involving common carriers, the question of negligence is invariably left to the jury. In *Cleveland Ry. Co.* v. *Crooks*, 125 Ohio St. 280, 181 N.E. 102 (1932), a passenger alighting from a city bus was struck by a passing automobile. A nonsuit on the pleadings was granted in the trial court on the ground that the relationship of passenger and carrier had terminated at the time of the injury. The Supreme Court of Ohio held that this was error and affirmed the holding of the Court of Appeals that the railway company owed the passenger an antecedent duty to do nothing that would tend to subject the passenger to any more than the usual and ordinary perils of traffic, and that it was a question of fact for the jury whether the railway company had created a condition that had such a tendency. Other cases analogous to *Dickerhoof* v. *Bair* are those in which a passenger who had just left a street car was struck by the overhang of the car as it turned the corner. Whether the defendant was negligent in starting the car before the plaintiff had an opportunity to reach a place of safety was a question for the jury. *White* v. *Connecticut Co.*, 88 Conn. 614, 92 Atl. 411, L.R.A. 1915C, 609 (1914); *Boa* v. *San Francisco-Oakland Terminal Rys.*, 182 Cal. 93, 187 Pac. 2 (1920); *Niles* v. *Boston Elevated Ry. Co.*, 230 Mass. 316, 119 N.E. 752 (1918); *Wilson* v. *International Ry. Co.*, 199 N.Y.S. 562, 205 App. Div. 275 (1923); *Holm* v. *City of Seattle*, 294 Pac. 261 (1930).

The main reliance of the plaintiff in the principal case was on *Ziehm* v. *Vale*, 98 Ohio St. 306, 120 N.E. 702, 1 A.L.R. 1381 (1918), in which it was held that, "Where an owner of an automobile, upon returning to his car, finds an infant 4½ years of age thereon, and twice drives the infant from the car, the owner is not thereby absolved from further duty towards such infant. Under such circumstances, when the child still remains in close proximity to the car, the driver is required to exercise reasonable care to avoid injury to the child." The fact that the driver had knowledge of the child's proximity increased the driver's duty in that case. In the principal case the driver did not know the child was near the bus, but that fact alone should not be sufficient to relieve him entirely of the great degree of care imposed upon him.

The result reached in the principal case was no doubt correct on the facts in that case. But in laying down a definite rule as to the duty of the school bus driver under the circumstances, the court went farther than was either necessary in the particular case or justifiable by reason of precedent.

JENNY BRACE